IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/02/2003

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Crl.R.C.No.294 of 2000

Statex Mills
Rep. by Power Agent
G.Satishkumar ..Petitioner

-Vs-

C.N.P.Rukmani
Proprietor
BEE ARR Textiles
Nallur, Vijayapuram Post
Tirupur 641 604. ..Respondent.

Criminal Revision Case filed against the orders passed in Crl.M.P.No. 2767 of 1999 in C.C.No. 197 of 1999 on the file of the Judicial Magistrate I, Tirupur, in dropping the proceedings against the respondent herein.

!For Petitioner : Mr.Mohamed Raffi

^For Respondent : Mr.R.Sivakumar

:O R D E R
This Criminal Revision Case has been filed against the orders passed in Crl.M.P.No. 2767 of 1999 in C.C.No. 197 of 1999 on the file of the Judicial Magistrate I, Tirupur, in dropping the proceedings against the respondent herein.

2. The brief facts of the prosecution as revealed in the complaint is that the respondent woman was a proprietrix of BEE ARR Textiles and she had purchased materials from the complainant Company, namely Statex Mills, to the tune of Rs.2,34,000/- and by way of payment, she had caused a cheque to be issued through Power of Attorney, namely her husband, to the said amount. But, when the cheque was presented in the bank, the same was returned with an endorsement "insufficient funds" and thereupon as required under the Negotiable Instruments Act, a notice was sent, both to the Power of Attorney, namely the husband of the respondent and the respondent. Both did not receive the notice and they were returned unclaimed. After complying with all the formalities, the prosecution was launched against them. But it appears that, the Power of Attorney, who has been arrayed as A.2 had died and the

proprietrix, who was instrumental for getting the materials purchased from the complainant and at whose instance the cheque has been issued was to be prosecuted. But an application for dropping the proceedings was filed on behalf of the respondent stating that the complainant does not disclose that she was actually in charge of the conduct of the business of the firm. The learned Magistrate appeared to have upheld it and dropped the proceedings.

3. I am afraid that the learned Magistrate misunderstood the provisions contemplated under Section 141. It is only in the case of a Firm, whether it is a partnership Firm or a Company, the averments has to be necessarily stated as to, whether the accused was incharge of the conduct of the business. But in a case of proprietrix Concern, such an averment is not at all necessary. The proprietrix is the person, who is responsible for the business. Though it may in terms contain the name Concern, Firm and other things, when it is a proprietrix Concern, the one and only person, who is liable is proprietrix. Though the cheque is signed by Power of Attorney on behalf of the respondent herein, the cheque discloses that he had signed only in the capacity as a Power of Attorney and hence, in such circumstances, the learned Magistrate, has erred in dropping the proceedings against the respondent.

4. Hence, I hereby set aside the orders passed by the learned Judicial Magistrate I, Tirupur in Crl.M.P.No. 2767 of 1999 in C.C.No. 197 of 1999 and direct the Magistrate to proceed against the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. In result, the Criminal Revision Case succeeds and the same is allowed.

Index:Yes
Internet: Yes
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To

1. The Judicial Magistrate I, Tirupur.

2. -do- thro' the Chief Judiciall Magistrate, Tirupur.

((SCO LYRIX 6.1
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